

Before the
Federal Communications Commission
Washington, DC

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In the Matter of:

Request for Review by

WESTERN HEIGHTS PUBLIC SCHOOL DISTRICT

Of decision of Universal Service Administrator
Under FCC Docket Nos. 97-21 and 96-45

Billed Entity No. 139844

Application No. 150495

Funding Request Nos. 254490,
254492, 254493, 254504, 254524,
254526

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REQUEST FOR REVIEW

Western Heights Public School District ("District") pursuant to Sections 54.719-54.721 of the Rules hereby seeks review of the Decision of the Universal Service Administrator in connection with the FRNs referenced above.

I. Question presented for Review: Whether for E-rate purposes the Commission should accept the "Feeder Pattern Method" as an alternative means to calculate the total number of students in a school district eligible for free or reduced price lunch under the National School Lunch Program.

As this request for review raises a novel question of policy, it should be considered by the full Commission. 47 CFR 54.722(a).

II. Administrative History/Statement of Facts

The Schools and Libraries Division of USAC ("SLD") issued a Funding Commitment Decision Letter to the District in connection with application number 139844. In its Commitment Letter, the SLD assigned an 80% discount rate to the District's only middle school, a 60% discount rate to the District's only high school, and a 78% shared discount rate to the District as a whole.

On August 31, 1999, the District appealed the discount rate decisions the SLD made in the above referenced application. Along with its appeal, the District submitted documentation showing that the SLD should have assigned a 90% discount rate to both its middle and high schools, and thus an 88% shared discount rate to the District. The lower discount rate, the District's evidence plainly showed, did not accurately reflect the high percentage of middle and high school students in the area who come from impoverished homes.

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The District advised the SLD that it had calculated the 88% shared discount rate using a combination of well-accepted methods. It had relied on traditional head-counting for elementary school students because the free and reduced lunch eligibility data collected for them is generally reliable and on the "Feeder Pattern Method" for middle and high school students for whom the opposite is true due to wide-spread and well documented under-reporting.

In its decision dated June 29, 2000 (received by the District on July 6, 2000), the SLD refused to increase the District's middle school rate from 80% to 90%, the high school rate from 60% to 90%, and, therefore, the shared discount rate from 78% to 88%. In support of this determination, the SLD reasoned as follows:

The shared discount percentage you requested was calculated based on Feeder School method, which is an unacceptable method for E-rate discounts; SLD modified your discount percentage to 78% in accordance with the actual count of students participating in the National School Program.

III. Discussion

The FCC has established as a first priority disbursing E-rate funds to school and library applicants in communities where poverty is at its most extreme. We are, therefore, disappointed, confused and, quite frankly, perplexed by the SLD's refusal to accept the Feeder Pattern Method as an acceptable alternative means of calculating the number of high school and middle school students eligible for free or reduced price lunch. This method ultimately paints a sadder, yet far more realistic, picture of the socio-economic condition that exists among this large segment of our school population. While we would love to report lower incidences of poverty in our District, reality simply does not permit us to do so. Sometimes we hear that numbers don't lie, but in this case, unfortunately, they do.

The Feeder Pattern Method is based on the logical assumption that middle schools and high schools should have NSLP eligibility rates similar to the elementary schools that feed into them. The middle school and high school NSLP eligibility rates can then be calculated based on a student-weighted average of the eligibility rates at a district's elementary schools. In our district, for example, the percentage of students eligible for free or reduced lunch at each elementary school based on applications on file is 85.5%, 72.2%, 90.1%, and 78%. The percentage of eligible students at our high school based on applications on file is 44.1%. As you can see, there is no logical correlation between the application-based percentages at the elementary schools and high school in our district.

The U.S. Department of Education, with all due respect to the Commission's highly able and professional staff, has far more experience than the Commission studying elementary and secondary school populations. We urge the Commission, therefore, to defer or at least to accord significant weight to that agency's longstanding practice of accepting the

Feeder Pattern Method as a reliable mechanism to compensate for the under-reporting of NSLP eligibility that typically occurs among middle and high school students. (See http://www.ed.gov/legislation/ESEA/Title_I/attend.html)

It is important to keep in mind that equitably distributing funds on behalf of financially disenfranchised students is one of the Department of Education's primary missions. Under Title I of the Elementary and Secondary Education Act (20 U.S.C. 6301-6514), for example, the Department awards billions of dollars in grant money to state educational agencies, who in turn distribute funds to schools that have high percentages of low income students.

Just like the E-rate regulations, the Department of Education's Title I regulations require state agencies to distribute funds first to the most economically disadvantaged schools. Also like the E-rate regulations, Title I demands that state agencies use specific data, such as the number of students eligible for free or reduced price lunch, to ensure that those agencies accurately measure the poverty levels in schools before distributing any funds. (See http://www.ed.gov/legislation/ESEA/Title_I/attend.html)

In contrast to the SLD's unduly narrow interpretation of the E-rate regulations, however, the Title I regulations expressly permit, if not encourage, using the Feeder Pattern Method to count more accurately the number of middle and high school students eligible for free or reduced price lunch. In this regard, we direct the Commission's attention to the following Q&A from the Department of Education's web site: (http://www.ed.gov/legislation/ESEA/Title_I/attend.html)

Q10. Is there any flexibility in how an LEA may count children from low-income families in middle and high schools?

A. Of the four measures of poverty the statute permits an LEA to use for identifying eligible school attendance areas and allocating funds to those areas, eligibility for free or reduced-price lunch is by far the measure most frequently used. Yet, we know from experience that high school and middle school students are less likely to participate in free and reduced-price lunch programs than are elementary school students. Hence, those schools often may not be identified as eligible for Title I services or, if eligible, may not receive as high an allocation as their actual poverty rate would require. In order to address the situation, an LEA may use comparable data collected through alternative means such as a survey. Also, an LEA may use the feeder pattern concept. This concept would allow the LEA to project the number of low-income children in a middle school or high school based on the average poverty rate of the elementary school attendance areas that feed into that school.

Western Heights School District submitted a free and reduced lunch count to the SLD that was certified, legitimized, endorsed, and supported by the Oklahoma State Department of Education, School Lunch Division. This is the same agency that the SLD relies upon routinely to verify the NSLP data submitted by E-rate applicants from the

State of Oklahoma. Significantly, this agency did not say that the District's count of eligible middle and high school students eligible for free or reduced price lunch was speculative, which, we believe, may be one of the Commission's concerns. To the contrary, the Oklahoma State Department of Education was unequivocal. It declared that it was "convinced" that the District's reported NSLP eligibility data using the Feeder Pattern Method "accurately depict[ed] the potential number of eligible free and reduced students in attendance at both Western Heights Middle School and Western Heights High School."

Thus, in the final analysis and consistent with the statement of program rules articulated in the SLD decision, it certainly may be said that District's NSLP data for the District's middle and high schools was based on the "actual students currently enrolled" at both locations. To arrive at those school numbers, the District used a method that both the Oklahoma and United States Departments of Education routinely accept and endorse. Moreover, the State Department of Education reviewed and approved the *specific* NSLP data that the District submitted to support its discount rate calculations. Ironically, had SLD's Program Integrity Assurance staff checked directly with the state agency, which they regularly do when discount issues arise, that agency would have confirmed the District's discount-related data without hesitation.

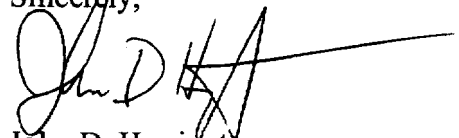
On behalf of the students of Western Heights Schools, who deserve their full and fair share of funding for technology under this extraordinary program, I urge the FCC to accept the Feeder Pattern Method as an alternative discount calculation mechanism and to reverse the SLD's decision.

IV. Relief Sought

Western Heights asks the SLD to permit it to calculate the E-rate discount rate for its middle and high schools and its shared, district-wide rate using the U.S. Department of Education-approved Feeder Pattern Method; to increase the discount rates of all of the FRNs listed in the table below; and to increase the funding of each FRN accordingly.

Application Number	FRN	Approved Pre-Discount Cost	Discount Rate	Approved Funding
150495	254490	\$6,878.00	88%	\$6,052.64
	254492	\$19,625.00	88%	\$17,270.00
	254493	\$500.00	88%	\$440.00
	254504	\$21,336.00	90%	\$19,202.40
	254524	\$21,808.50	90%	\$19,627.65
	254526	\$250.00	90%	\$225.00

Sincerely,



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cc: Mr. Joseph Kitchens, Superintendent
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